

AMENDED IN SENATE MAY 26, 2006
AMENDED IN SENATE APRIL 26, 2006
AMENDED IN SENATE MARCH 23, 2006

SENATE BILL

No. 1330

Introduced by Senator Dunn
(Coauthors: Assembly Members Garcia and Leslie)

February 17, 2006

An act to amend Sections 65589.5, 65863, and 65915 of the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

SB 1330, as amended, Dunn. Housing developments: attorney's fees.

(1) The Planning and Zoning Law requires local agencies to make specified written findings based upon substantial evidence in the record before disapproving or conditionally approving a housing development project that renders it infeasible for the use of very low, low-, or moderate-income households, including farmworker housing. This law authorizes an applicant for a housing development project and a person who would be eligible to apply for residence in the development to bring an action for a violation of this provision.

(2) The Planning and Zoning Law also prohibits a city, county, or city and county from reducing, requiring, or permitting the reduction of the residential density to a lower residential density that is below the density that was utilized by the Department of Housing and Community Development in determining compliance with housing element law unless the city, county, or city and county makes written findings supported by substantial evidence that the reduction is

consistent with the adopted general plan, including the housing element, and the remaining sites identified in the housing element are adequate to accommodate the jurisdiction's share of the regional housing need. The city, county, or city and county may reduce the residential density for a parcel if it identifies sufficient additional sites, as prescribed. This law authorizes plaintiffs or petitioners who proposed the housing development to bring an action for a violation of this provision.

(3) The Planning and Zoning Law also requires, when a developer of housing proposes a housing development within the jurisdiction of the local government, that the city, county, or city and county provide the developer with a density bonus or other incentives or concessions for the production of lower income housing units if the developer agrees to construct a specified percentage of the total units for specified income households or qualifying residents and requires the developer to agree to the continued affordability of the units, as specified. This law authorizes an applicant for a density bonus, incentive, or concession to bring an action for a violation of this provision.

(4) Existing law requires the court to award to the plaintiff reasonable attorney's fees and costs, as specified, in any action in which the court finds a violation of the above provisions. This requirement is repealed on January 1, 2007, for the provisions referenced in paragraph (2) above.

This bill would revise the attorney's fees and costs provisions in all 3 of the above provisions by requiring the court to award reasonable attorney's fees and costs, except under extraordinary circumstances in which the court finds that awarding fees would not further the purposes of these provisions, in addition to any attorney fees to which the plaintiff is entitled under a specified provision of the Code of Civil Procedure. The bill would delete the January 1, 2007, repeal date for the provisions referenced in paragraph (2) above ~~and would also authorize a person who would be eligible to apply for residency in an affordable unit that would have been available because of the density bonus law to bring an action for a violation of that law.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 65589.5 of the Government Code is
2 amended to read:

3 65589.5. (a) The Legislature finds and declares all of the
4 following:

5 (1) The lack of housing is a critical problem that threatens the
6 economic, environmental, and social quality of life in California.

7 (2) California housing has become the most expensive in the
8 nation. The excessive cost of the state's housing supply is
9 partially caused by activities and policies of many local
10 governments that limit the approval of housing, increase the cost
11 of land for housing, and require that high fees and exactions be
12 paid by producers of housing.

13 (3) Among the consequences of those actions are
14 discrimination against low-income and minority households, lack
15 of housing to support employment growth, imbalance in jobs and
16 housing, reduced mobility, urban sprawl, excessive commuting,
17 and air quality deterioration.

18 (4) Many local governments do not give adequate attention to
19 the economic, environmental, and social costs of decisions that
20 result in disapproval of housing projects, reduction in density of
21 housing projects, and excessive standards for housing projects.

22 (b) It is the policy of the state that a local government not
23 reject or make infeasible housing developments that contribute to
24 meeting the housing need determined pursuant to this article
25 without a thorough analysis of the economic, social, and
26 environmental effects of the action and without complying with
27 subdivision (d).

28 (c) The Legislature also recognizes that premature and
29 unnecessary development of agricultural lands for urban uses
30 continues to have adverse effects on the availability of those
31 lands for food and fiber production and on the economy of the
32 state. Furthermore, it is the policy of the state that development
33 should be guided away from prime agricultural lands; therefore,
34 in implementing this section, local jurisdictions should
35 encourage, to the maximum extent practicable, in filling existing
36 urban areas.

37 (d) A local agency shall not disapprove a housing
38 development project, including farmworker housing as defined in

subdivision (d) of Section 50199.50 of the Health and Safety Code, for very low, low-, or moderate-income households or condition approval, including through the use of design review standards, in a manner that renders the project infeasible for development for the use of very low, low-, or moderate-income households unless it makes written findings, based upon substantial evidence in the record, as to one of the following:

(1) The jurisdiction has adopted a housing element pursuant to this article that has been revised in accordance with Section 65588, is in substantial compliance with this article, and the jurisdiction has met or exceeded its share of the regional housing need allocation pursuant to Section 65584 for the planning period for the income category proposed for the housing development project, provided that any disapproval or conditional approval shall not be based on any of the reasons prohibited by Section 65008. If the housing development project includes a mix of income categories, and the jurisdiction has not met or exceeded its share of the regional housing need for one or more of those categories, then this paragraph shall not be used to disapprove or conditionally approve the project. The share of the regional housing need met by the jurisdiction shall be calculated consistently with the forms and definitions that may be adopted by the Department of Housing and Community Development pursuant to Section 65400. Any disapproval or conditional approval pursuant to this paragraph shall be in accordance with applicable law, rule, or standards.

(2) The development project as proposed would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households. As used in this paragraph, a “specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. Inconsistency with the zoning ordinance or general plan land use designation shall not constitute a specific, adverse impact upon the public health or safety.

(3) The denial of the project or imposition of conditions is required in order to comply with specific state or federal law, and

1 there is no feasible method to comply without rendering the
2 development unaffordable to low- and moderate-income
3 households.

4 (4) The development project is proposed on land zoned for
5 agriculture or resource preservation that is surrounded on at least
6 two sides by land being used for agricultural or resource
7 preservation purposes, or that does not have adequate water or
8 wastewater facilities to serve the project.

9 (5) The development project is inconsistent with both the
10 jurisdiction's zoning ordinance and general plan land use
11 designation as specified in any element of the general plan as it
12 existed on the date the application was deemed complete, and the
13 jurisdiction has adopted a revised housing element in accordance
14 with Section 65588 that is in substantial compliance with this
15 article.

16 (A) This paragraph cannot be utilized to disapprove or
17 conditionally approve a housing development project if the
18 development project is proposed on a site that is identified as
19 suitable or available for very low, low-, or moderate-income
20 households in the jurisdiction's housing element, and consistent
21 with the density specified in the housing element, even though it
22 is inconsistent with both the jurisdiction's zoning ordinance and
23 general plan land use designation.

24 (B) If the local agency has failed, in accordance with Section
25 65583.2, to identify in the inventory of land in its housing
26 element sites that can be developed for housing within the
27 planning period and that are sufficient to provide for the
28 jurisdiction's share of the regional housing need for all income
29 levels pursuant to Section 65584, then this paragraph shall not be
30 utilized to disapprove or conditionally approve a housing
31 development project proposed for a site designated in any
32 element of the general plan for residential uses or designated in
33 any element of the general plan for commercial uses if residential
34 uses are permitted or conditionally permitted within commercial
35 designations. In any action in court, the burden of proof shall be
36 on the local agency to show that its housing element does
37 identify adequate sites with appropriate zoning and development
38 standards and with services and facilities to accommodate the
39 local agency's share of the regional housing need for the very
40 low and low-income categories.

1 (e) This section does not relieve the local agency from
2 complying with the Congestion Management Program required
3 by Chapter 2.6 (commencing with Section 65088) of Division 1
4 of Title 7 or the California Coastal Act (Division 20
5 (commencing with Section 30000) of the Public Resources
6 Code). This section also does not relieve the local agency from
7 making one or more of the findings required pursuant to Section
8 21081 of the Public Resources Code or otherwise complying
9 with the California Environmental Quality Act (Division 13
10 (commencing with Section 21000) of the Public Resources
11 Code).

12 (f) This section does not prohibit a local agency from requiring
13 the development project to comply with objective, quantifiable,
14 written development standards, conditions, and policies
15 appropriate to, and consistent with, meeting the jurisdiction's
16 share of the regional housing need pursuant to Section 65584.
17 However, the development standards, conditions, and policies
18 shall be applied to facilitate and accommodate development at
19 the density permitted on the site and proposed by the
20 development project. This section does not prohibit a local
21 agency from imposing fees and other exactions otherwise
22 authorized by law that are essential to provide necessary public
23 services and facilities to the development project.

24 (g) This section shall be applicable to charter cities because
25 the Legislature finds that the lack of housing is a critical
26 statewide problem.

27 (h) The following definitions apply for the purposes of this
28 section:

29 (1) "Feasible" means capable of being accomplished in a
30 successful manner within a reasonable period of time, taking into
31 account economic, environmental, social, and technological
32 factors.

33 (2) "Housing development project" means a use consisting of
34 either of the following:

35 (A) Residential units only.

36 (B) Mixed-use developments consisting of residential and
37 nonresidential uses in which nonresidential uses are limited to
38 neighborhood commercial uses and to the first floor of buildings
39 that are two or more stories. As used in this paragraph,
40 "neighborhood commercial" means small-scale general or

1 specialty stores that furnish goods and services primarily to
2 residents of the neighborhood.

3 (3) “Housing for very low, low-, or moderate-income
4 households” means that either (A) at least 20 percent of the total
5 units shall be sold or rented to lower income households, as
6 defined in Section 50079.5 of the Health and Safety Code, or (B)
7 100 percent of the units shall be sold or rented to
8 moderate-income households, as defined in Section 50093 of the
9 Health and Safety Code, or middle-income households, as
10 defined in Section 65008 of this code. Housing units targeted for
11 lower income households shall be made available at a monthly
12 housing cost that does not exceed 30 percent of 60 percent of
13 area median income with adjustments for household size made in
14 accordance with the adjustment factors on which the lower
15 income eligibility limits are based. Housing units targeted for
16 persons and families of moderate income shall be made available
17 at a monthly housing cost that does not exceed 30 percent of 100
18 percent of area median income with adjustments for household
19 size made in accordance with the adjustment factors on which the
20 moderate income eligibility limits are based.

21 (4) “Area median income” means area median income as
22 periodically established by the Department of Housing and
23 Community Development pursuant to Section 50093 of the
24 Health and Safety Code. The developer shall provide sufficient
25 legal commitments to ensure continued availability of units for
26 very low or low-income households in accordance with this
27 subdivision for 30 years.

28 (5) “Neighborhood” means a planning area commonly
29 identified in a community’s planning documents, and identified
30 as a neighborhood by the individuals residing and working within
31 the neighborhood. Documentation demonstrating that the area
32 meets the definition of neighborhood may include a map
33 prepared for planning purposes that lists the name and boundaries
34 of the neighborhood.

35 (6) “Disapprove the development project” includes any
36 instance in which a local agency does either of the following:

37 (A) Votes on a proposed housing development project
38 application and the application is disapproved.

39 (B) Fails to comply with the time periods specified in
40 subparagraph (B) of paragraph (1) of subdivision (a) of Section

1 65950. An extension of time pursuant to Article 5 (commencing
2 with Section 65950) shall be deemed to be an extension of time
3 pursuant to this paragraph.

4 (i) If any city, county, or city and county denies approval or
5 imposes restrictions, including design changes, a reduction of
6 allowable densities or the percentage of a lot that may be
7 occupied by a building or structure under the applicable planning
8 and zoning in force at the time the application is deemed
9 complete pursuant to Section 65943, that have a substantial
10 adverse effect on the viability or affordability of a housing
11 development for very low, low-, or moderate-income households,
12 and the denial of the development or the imposition of
13 restrictions on the development is the subject of a court action
14 that challenges the denial, then the burden of proof shall be on
15 the local legislative body to show that its decision is consistent
16 with the findings as described in subdivision (d) and that the
17 findings are supported by substantial evidence in the record.

18 (j) When a proposed housing development project complies
19 with applicable, objective general plan and zoning standards and
20 criteria, including design review standards, in effect at the time
21 that the housing development project's application is determined
22 to be complete, but the local agency proposes to disapprove the
23 project or to approve it upon the condition that the project be
24 developed at a lower density, the local agency shall base its
25 decision regarding the proposed housing development project
26 upon written findings supported by substantial evidence on the
27 record that both of the following conditions exist:

28 (1) The housing development project would have a specific,
29 adverse impact upon the public health or safety unless the project
30 is disapproved or approved upon the condition that the project be
31 developed at a lower density. As used in this paragraph, a
32 "specific, adverse impact" means a significant, quantifiable,
33 direct, and unavoidable impact, based on objective, identified
34 written public health or safety standards, policies, or conditions
35 as they existed on the date the application was deemed complete.

36 (2) There is no feasible method to satisfactorily mitigate or
37 avoid the adverse impact identified pursuant to paragraph (1),
38 other than the disapproval of the housing development project or
39 the approval of the project upon the condition that it be
40 developed at a lower density.

1 (k) (1) The applicant or any person who would be eligible to
2 apply for residency in the development may bring an action to
3 enforce this section.

4 (2) (A) If, in any action brought to enforce the provisions of
5 this section, a court finds that the local agency disapproved a
6 project or conditioned its approval in a manner rendering it
7 infeasible for the development of housing for very low, low-, or
8 moderate-income households, including farmworker housing,
9 without making the findings required by this section or without
10 making sufficient findings supported by substantial evidence, the
11 court shall issue an order or judgment compelling compliance
12 with this section within 60 days, including, but not limited to, an
13 order that the local agency take action on the development
14 project.

15 (B) The court shall retain jurisdiction to ensure that its order or
16 judgment is carried out and shall award reasonable attorney's
17 fees and costs of suit to the plaintiff or petitioner, except under
18 extraordinary circumstances in which the court finds that
19 awarding fees would not further the purposes of this section.

20 (C) The court shall not award attorney's fees pursuant to this
21 section, but may award attorney's fees pursuant to any other law,
22 to project applicants who, in the past year or current year or on
23 average over the last five years, have secured occupancy permits
24 within the United States on 1,000 or more new housing units per
25 year, including permits secured by any affiliate, including a
26 construction-related corporation, partnership, joint venture, or
27 limited liability company of which the applicant is a part,
28 including as a partner, shareholder, or member of these entities.`

29 (3) If the court determines that its order or judgment has not
30 been carried out within 60 days, the court may issue further
31 orders as provided by law to ensure that the purposes and policies
32 of this section are fulfilled, including, but not limited to, an order
33 to vacate the decision of the local agency, in which case the
34 application for the project, as constituted at the time the local
35 agency took the initial action determined to be in violation of this
36 section, along with any standard conditions determined by the
37 court to be generally imposed by the local agency on similar
38 projects, shall be deemed approved unless the applicant consents
39 to a different decision or action by the local agency.

(4) The availability of attorney's fees under this section does not preclude a plaintiff from seeking an alternative award of attorney's fees under Section 1021.5 of the Code of Civil Procedure.

(l) If the court finds that the local agency (1) acted in bad faith when it disapproved or conditionally approved the housing development in violation of this section and (2) failed to carry out the court's order or judgment within 60 days as described in paragraph (k), the court, in addition to any other remedies provided by this section, may impose fines upon the local agency that the local agency shall be required to deposit into a housing trust fund. Fines shall not be paid from funds that are already dedicated for affordable housing, including, but not limited to, redevelopment or low- and moderate-income housing funds and federal HOME and CDBG funds. The local agency shall commit the money in the trust fund within five years for the sole purpose of financing newly constructed housing units affordable to extremely low, very low, or low-income households. For purposes of this section, "bad faith" shall mean an action that is frivolous or otherwise entirely without merit.

(m) Any action brought to enforce this section shall be brought pursuant to Section 1094.5 of the Code of Civil Procedure, and the local agency shall prepare and certify the record of proceedings in accordance with subdivision (c) of Section 1094.6 of the Code of Civil Procedure no later than 30 days after the petition is served, provided that the cost of preparation of the record shall be borne by the local agency. Upon entry of the trial court's order, a party shall, in order to obtain appellate review of the order, file a petition within 20 days after service upon it of a written notice of the entry of the order, or within any further time not exceeding an additional 20 days as the trial court may for good cause allow. If the local agency appeals the judgment of the trial court, the local agency shall post a bond, in an amount to be determined by the court, to the benefit of the plaintiff if the plaintiff is the project applicant.

(n) In any action, the record of the proceedings before the local agency shall be filed as expeditiously as possible and, notwithstanding Section 1094.6 of the Code of Civil Procedure or subdivision (m) of this section, all or part of the record may be prepared (1) by the petitioner with the petition or petitioner's

1 points and authorities, (2) by the respondent with respondent's
2 points and authorities, (3) after payment of costs by the
3 petitioner, or (4) as otherwise directed by the court. If the
4 expense of preparing the record has been borne by the petitioner
5 and the petitioner is the prevailing party, the expense shall be
6 taxable as costs.

7 SEC. 2. Section 65863 of the Government Code is amended
8 to read:

9 65863. (a) Each city, county, or city and county shall ensure
10 that its inventory or programs of adequate sites pursuant to
11 paragraph (3) of subdivision (a) of Section 65583 and paragraph
12 (1) of subdivision (c) of Section 65583 can accommodate its
13 share of the regional housing need pursuant to Section 65584,
14 throughout the planning period.

15 (b) No city, county, or city and county shall, by administrative,
16 quasi-judicial, or legislative action, reduce, require, or permit the
17 reduction of the residential density for any parcel to a lower
18 residential density that is below the density that was utilized by
19 the Department of Housing and Community Development in
20 determining compliance with housing element law, Article 10.6
21 (commencing with Section 65580) of Chapter 3, unless the city,
22 county, or city and county makes written findings supported by
23 substantial evidence of both of the following:

24 (1) The reduction is consistent with the adopted general plan,
25 including the housing element.

26 (2) The remaining sites identified in the housing element are
27 adequate to accommodate the jurisdiction's share of the regional
28 housing need pursuant to Section 65584.

29 (c) If a reduction in residential density for any parcel would
30 result in the remaining sites in the housing element not being
31 adequate to accommodate the jurisdiction's share of the regional
32 housing need pursuant to Section 65584, the jurisdiction may
33 reduce the density on that parcel if it identifies sufficient
34 additional, adequate, and available sites with an equal or greater
35 residential density in the jurisdiction so that there is no net loss of
36 residential unit capacity.

37 (d) The requirements of this section shall be in addition to any
38 other law that may restrict or limit the reduction of residential
39 density.

1 (e) (1) The applicant, ~~or any person who would be eligible to~~
2 ~~apply for residency in the development~~, may bring an action to
3 enforce this section.

4 (2) If a court finds that an action of a city, county, or city and
5 county violates this section, the court shall award reasonable
6 attorney's fees and costs of suit to the plaintiff or petitioner *who*
7 *proposed the housing development*, except under extraordinary
8 circumstances in which the court finds that awarding fees would
9 not further the purposes of this section.

10 (3) The court shall not award attorney's fees pursuant to this
11 section, but may award attorney's fees pursuant to any other law,
12 to project applicants who, in the past year or current year or on
13 average over the last five years, have secured occupancy permits
14 within the United States on 1,000 or more new housing units per
15 year, including permits secured by any affiliate, including a
16 construction-related corporation, partnership, joint venture, or
17 limited liability company of which the applicant is a part,
18 including as a partner, shareholder, or member of these entities.

19 (4) The availability of attorney's fees under this section does
20 not preclude a plaintiff from seeking an alternative award of
21 attorney's fees under Section 1021.5 of the Code of Civil
22 Procedure.

23 (f) This section requires that a city, county, or city and county
24 be solely responsible for compliance with this section, unless a
25 project applicant requests in his or her initial application, as
26 submitted, a density that would result in the remaining sites in
27 the housing element not being adequate to accommodate the
28 jurisdiction's share of the regional housing need pursuant to
29 Section 65584. In that case, the city, county, or city and county
30 may require the project applicant to comply with this section.
31 The submission of an application for purposes of this subdivision
32 does not depend on the application being deemed complete or
33 being accepted by the city, county, or city and county.

34 (g) This section shall not be construed to apply to parcels that,
35 prior to January 1, 2003, were either (1) subject to a development
36 agreement, or (2) parcels for which an application for a
37 subdivision map had been submitted.

38 SEC. 3. Section 65915 of the Government Code is amended
39 to read:

65915. (a) When an applicant seeks a density bonus for a housing development within, or for the donation of land for housing within, the jurisdiction of a city, county, or city and county, that local government shall provide the applicant incentives or concessions for the production of housing units and child care facilities as prescribed in this section. All cities, counties, or cities and counties shall adopt an ordinance that specifies how compliance with this section will be implemented.

(b) (1) A city, county, or city and county shall grant one density bonus, the amount of which shall be as specified in subdivision (f), and incentives or concessions, as described in subdivision (d), when an applicant for a housing development seeks and agrees to construct a housing development, excluding any units permitted by the density bonus awarded pursuant to this section, that will contain at least any one of the following:

(A) Ten percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code.

(B) Five percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code.

(C) A senior citizen housing development, as defined in Sections 51.3 and 51.12 of the Civil Code, or mobilehome park that limits residency based on age requirements for housing for older persons pursuant to Section 798.76 or 799.5 of the Civil Code.

(D) Ten percent of the total dwelling units in a common interest development, as defined in Section 1351 of the Civil Code, for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, provided that all units in the development are offered to the public for purchase.

(2) For purposes of calculating the amount of the density bonus pursuant to subdivision (g), the applicant who requests a density bonus pursuant to this subdivision shall elect whether the bonus shall be awarded on the basis of subparagraph (A), (B), (C), or (D) of paragraph (1).

(c) (1) An applicant shall agree to, and the city, county, or city and county shall ensure, continued affordability of all low-and very low income units that qualified the applicant for the award of the density bonus for 30 years or a longer period of time if

1 required by the construction or mortgage financing assistance
2 program, mortgage insurance program, or rental subsidy
3 program. Rents for the lower income density bonus units shall be
4 set at an affordable rent, as defined in Section 50053 of the
5 Health and Safety Code. Owner-occupied units shall be available
6 at an affordable housing cost, as defined in Section 50052.5 of
7 the Health and Safety Code.

8 (2) An applicant shall agree to, and the city, county, or city
9 and county shall ensure that, the initial occupant of the
10 moderate-income units that are directly related to the receipt of
11 the density bonus in the common interest development, as
12 defined in Section 1351 of the Civil Code, are persons and
13 families of moderate income, as defined in Section 50093 of the
14 Health and Safety Code, and that the units are offered at an
15 affordable housing cost, as that cost is defined in Section 50052.5
16 of the Health and Safety Code. The local government shall
17 enforce an equity-sharing agreement, unless it is in conflict with
18 the requirements of another public funding source or law. The
19 following apply to the equity-sharing agreement:

20 (A) Upon resale, the seller of the unit shall retain the value of
21 any improvements, the downpayment, and the seller's
22 proportionate share of appreciation. The local government shall
23 recapture any initial subsidy and its proportionate share of
24 appreciation, which shall then be used within three years for any
25 of the purposes described in subdivision (e) of Section 33334.2
26 of the Health and Safety Code that promote homeownership.

27 (B) For purposes of this subdivision, the local government's
28 initial subsidy shall be equal to the fair market value of the home
29 at the time of initial sale minus the initial sale price to the
30 moderate-income household, plus the amount of any
31 downpayment assistance or mortgage assistance. If upon resale
32 the market value is lower than the initial market value, then the
33 value at the time of the resale shall be used as the initial market
34 value.

35 (C) For purposes of this subdivision, the local government's
36 proportionate share of appreciation shall be equal to the ratio of
37 the initial subsidy to the fair market value of the home at the time
38 of initial sale.

39 (d) (1) An applicant for a density bonus pursuant to
40 subdivision (b) may submit to a city, county, or city and county a

1 proposal for the specific incentives or concessions that the
2 applicant requests pursuant to this section, and may request a
3 meeting with the city, county, or city and county. The city,
4 county, or city and county shall grant the concession or incentive
5 requested by the applicant unless the city, county, or city and
6 county makes a written finding, based upon substantial evidence,
7 of either of the following:

8 (A) The concession or incentive is not required in order to
9 provide for affordable housing costs, as defined in Section
10 50052.5 of the Health and Safety Code, or for rents for the
11 targeted units to be set as specified in subdivision (c).

12 (B) The concession or incentive would have a specific adverse
13 impact, as defined in paragraph (2) of subdivision (d) of Section
14 65589.5, upon public health and safety or the physical
15 environment or on any real property that is listed in the
16 California Register of Historical Resources and for which there is
17 no feasible method to satisfactorily mitigate or avoid the specific
18 adverse impact without rendering the development unaffordable
19 to low- and moderate-income households.

20 (2) The applicant shall receive the following number of
21 incentives or concessions:

22 (A) One incentive or concession for projects that include at
23 least 10 percent of the total units for lower income households, at
24 least 5 percent for very low income households, or at least 10
25 percent for persons and families of moderate income in a
26 common interest development.

27 (B) Two incentives or concessions for projects that include at
28 least 20 percent of the total units for lower income households, at
29 least 10 percent for very low income households, or at least 20
30 percent for persons and families of moderate income in a
31 common interest development.

32 (C) Three incentives or concessions for projects that include at
33 least 30 percent of the total units for lower income households, at
34 least 15 percent for very low income households, or at least 30
35 percent for persons and families of moderate income in a
36 common interest development.

37 (A) This subdivision does not require a local government to
38 grant an incentive or concession that has a specific, adverse
39 impact, as defined in paragraph (2) of subdivision (d) of Section
40 65589.5, upon health, safety, or the physical environment, and

1 for which there is no feasible method to satisfactorily mitigate or
2 avoid the specific adverse impact.

3 (B) This subdivision does not require a local government to
4 grant an incentive or concession that would have an adverse
5 impact on any real property that is listed in the California
6 Register of Historical Resources.

7 (4) The city, county, or city and county shall establish
8 procedures for carrying out this section, that shall include
9 legislative body approval of the means of compliance with this
10 section. The city, county, or city and county shall also establish
11 procedures for waiving or modifying development and zoning
12 standards that would otherwise inhibit the utilization of the
13 density bonus on specific sites. These procedures shall include,
14 but not be limited to, items such as minimum lot size, side yard
15 setbacks, and placement of public works improvements.

16 (5) (A) ~~The applicant or a person who would be eligible to~~
17 ~~apply for residency in the development~~ may initiate judicial
18 proceedings if the city, county, or city and county refuses to grant
19 a requested density bonus, incentive, or concession. ~~If the~~
20 ~~plaintiff or petitioner is a prospective resident, the resident shall~~
21 ~~have the burden of proving that the refusal to grant a density~~
22 ~~bonus, incentive, or concession precludes the construction of a~~
23 ~~development for senior, very low, low-, or moderate-income~~
24 ~~households.~~

25 (B) If a courts finds that the refusal to grant a requested
26 density bonus, incentive, or concession is in violation of this
27 section, the court shall award the plaintiff or petitioner
28 reasonable attorney's fees and costs of the suit, except under
29 extraordinary circumstances in which the court finds that
30 awarding fees would not further the purposes of this section.

31 (C) The court shall not award attorney's fees pursuant to this
32 section, but may award attorney's fees pursuant to any other law,
33 to project applicants who, in the past year or current year or on
34 average over the last five years, have secured occupancy permits
35 within the United States on 1,000 or more new housing units per
36 year, including permits secured by any affiliate, including a
37 construction-related corporation, partnership, joint venture, or
38 limited liability company of which the applicant is a part,
39 including as a partner, shareholder, or member of these entities.

1 (D) The availability of attorney's fees under this section does
2 not preclude a plaintiff or petitioner from seeking an alternative
3 award of attorney's fees under Section 1021.5 of the Code of
4 Civil Procedure.

5 (e) (1) In no case may a city, county, or city and county apply
6 any development standard that will have the effect of precluding
7 the construction of a development meeting the criteria of
8 subdivision (b) at the densities or with the concessions or
9 incentives permitted by this section.

10 (2) An applicant may submit to a city, county, or city and
11 county a proposal for the waiver or reduction of development
12 standards and may request a meeting with the city, county, or city
13 and county.

14 ~~(3) (A) The applicant or a person who would be eligible to~~
15 ~~apply for residency in the development may bring an action to~~
16 ~~enforce this subdivision. If the plaintiff or petitioner is a~~
17 ~~prospective resident, the resident shall have the burden of~~
18 ~~proving that the refusal to grant a waiver or reduction of~~
19 ~~development standards precludes the construction of a~~
20 ~~development for senior, very low, low-, or moderate-income~~
21 ~~households.~~

22 (B) If a courts finds that the refusal to grant a waiver or
23 reduction of development standards is in violation of this section,
24 the court shall award the plaintiff or petitioner reasonable
25 attorney's fees and costs of the suit, except under extraordinary
26 circumstances in which the court finds that awarding fees would
27 not further the purposes of this section.

28 (C) The court shall not award attorney's fees pursuant to this
29 section, but may award attorney's fees pursuant to any other law,
30 to project applicants who, in the past year or current year or on
31 average over the last five years, have secured occupancy permits
32 within the United States on 1,000 or more new housing units per
33 year, including permits secured by any affiliate, including a
34 construction-related corporation, partnership, joint venture, or
35 limited liability company of which the applicant is a part,
36 including as a partner, shareholder, or member of these entities.

37 (D) The availability of attorney's fees under this section does
38 not preclude a plaintiff or petitioner from seeking an alternative
39 award of attorney's fees under Section 1021.5 of the Code of
40 Civil Procedure.

(4) (A) This subdivision does not require a local government to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.

(B) This subdivision does not require a local government to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources.

(f) The applicant shall show that the waiver or modification is necessary to make the housing units economically feasible.

(g) For the purposes of this chapter, “density bonus” means a density increase over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan as of the date of application by the applicant to the city, county, or city and county. The applicant may elect to accept a lesser percentage of density bonus. The amount of density bonus to which the applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in subdivision (b).

(1) For housing developments meeting the criteria of subparagraph (A) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Low-Income Units	Percentage Density Bonus
10	20
11	21.5
12	23
13	24.5
14	26
15	27.5
17	30.5
18	32
19	33.5
20	35

(2) For housing developments meeting the criteria of subparagraph (B) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Very Low Income Units	Percentage Density Bonus
5	20
6	22.5
7	25
8	27.5
9	30
10	32.5
11	35

(3) For housing developments meeting the criteria of subparagraph (C) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent.

(4) For housing developments meeting the criteria of subparagraph (D) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Moderate-Income Units	Percentage Density Bonus
10	5
11	6
12	7
13	8
14	9
15	10
16	11
17	12
18	13
19	14
20	15
21	16
22	17
23	18
24	19
25	20
26	21
27	22

	Percentage Moderate-Income Units	Percentage Density Bonus
1		
2	28	23
3	29	24
4	30	25
5	31	26
6	32	27
7	33	28
8	34	29
9	35	30
10	36	31
11	37	32
12	38	33
13	39	34
14	40	35

15

16 (5) All density calculations resulting in fractional units shall
 17 be rounded up to the next whole number. The granting of a
 18 density bonus shall not be interpreted, in and of itself, to require
 19 a general plan amendment, local coastal plan amendment, zoning
 20 change, or other discretionary approval. As used in subdivision
 21 (b), “total units” or “total dwelling units” does not include units
 22 permitted by a density bonus awarded pursuant to this section or
 23 any local law granting a greater density bonus. The density bonus
 24 provided by this section shall apply to housing developments
 25 consisting of five or more dwelling units.

26 (h) (1) When an applicant for a tentative subdivision map,
 27 parcel map, or other residential development approval donates
 28 land to a city, county, or city and county as provided for in this
 29 subdivision, the applicant shall be entitled to a 15-percent
 30 increase above the otherwise maximum allowable residential
 31 density under the applicable zoning ordinance and land use
 32 element of the general plan for the entire development, as
 33 follows:

34

	Percentage Very Low Income	Percentage Density Bonus
35		
36	10	15
37	11	16
38	12	17
39	13	18
40	14	19

	Percentage Very Low Income	Percentage Density Bonus
1		
2	15	20
3	16	21
4	17	22
5	18	23
6	19	24
7	20	25
8	21	26
9	22	27
10	23	28
11	24	29
12	25	30
13	26	31
14	27	32
15	28	33
16	29	34
17	30	35

18

19 (2) This increase shall be in addition to any increase in density
20 mandated by subdivision (b), up to a maximum combined
21 mandated density increase of 35 percent if an applicant seeks
22 both the increase required pursuant to this subdivision and
23 subdivision (b). All density calculations resulting in fractional
24 units shall be rounded up to the next whole number. This
25 subdivision does not enlarge or diminish the authority of a city,
26 county, or city and county to require a developer to donate land
27 as a condition of development. An applicant shall be eligible for
28 the increased density bonus described in this subdivision if all of
29 the following conditions are met:

30 (A) The applicant donates and transfers the land no later than
31 the date of approval of the final subdivision map, parcel map, or
32 residential development application.

33 (B) The developable acreage and zoning classification of the
34 land being transferred are sufficient to permit construction of
35 units affordable to very low income households in an amount not
36 less than 10 percent of the number of residential units of the
37 proposed development.

38 (C) The transferred land is at least one acre in size or of
39 sufficient size to permit development of at least 40 units, has the
40 appropriate general plan designation, is appropriately zoned for

1 development as affordable housing, and is or will be served by
2 adequate public facilities and infrastructure. The land shall have
3 appropriate zoning and development standards to make the
4 development of the affordable units feasible. No later than the
5 date of approval of the final subdivision map, parcel map, or of
6 the residential development, the transferred land shall have all of
7 the permits and approvals, other than building permits, necessary
8 for the development of the very low income housing units on the
9 transferred land, except that the local government may subject
10 the proposed development to subsequent design review to the
11 extent authorized by subdivision (i) of Section 65583.2 if the
12 design is not reviewed by the local government prior to the time
13 of transfer.

14 (D) The transferred land and the affordable units shall be
15 subject to a deed restriction ensuring continued affordability of
16 the units consistent with paragraphs (1) and (2) of subdivision
17 (c), which shall be recorded on the property at the time of
18 dedication.

19 (E) The land is transferred to the local agency or to a housing
20 developer approved by the local agency. The local agency may
21 require the applicant to identify and transfer the land to the
22 developer.

23 (F) The transferred land shall be within the boundary of the
24 proposed development or, if the local agency agrees, within
25 one-quarter mile of the boundary of the proposed development.

26 (i) (1) When an applicant proposes to construct a housing
27 development that conforms to the requirements of subdivision (b)
28 and includes a child care facility that will be located on the
29 premises of, as part of, or adjacent to, the project, the city,
30 county, or city and county shall grant either of the following:

31 (A) An additional density bonus that is an amount of square
32 feet of residential space that is equal to or greater than the
33 amount of square feet in the child care facility.

34 (B) An additional concession or incentive that contributes
35 significantly to the economic feasibility of the construction of the
36 child care facility.

37 (2) The city, county, or city and county shall require, as a
38 condition of approving the housing development, that the
39 following occur:

1 (A) The child care facility shall remain in operation for a
2 period of time that is as long as or longer than the period of time
3 during which the density bonus units are required to remain
4 affordable pursuant to subdivision (c).

5 (B) Of the children who attend the child care facility, the
6 children of very low income households, lower income
7 households, or families of moderate income shall equal a
8 percentage that is equal to, or greater than, the percentage of
9 dwelling units that are required for very low income households,
10 lower income households, or families of moderate income
11 pursuant to subdivision (b).

12 (3) Notwithstanding any requirement of this subdivision, a
13 city, county, or a city and county shall not be required to provide
14 a density bonus or concession for a child care facility if it finds,
15 based upon substantial evidence, that the community has
16 adequate child care facilities.

17 (4) “Child care facility,” as used in this section, means a child
18 day care facility other than a family day care home, including,
19 but not limited to, infant centers, preschools, extended day care
20 facilities, and schoolage child care centers.

21 (j) “Housing development,” as used in this section, means one
22 or more groups of projects for residential units constructed in the
23 planned development of a city, county, or city and county. For
24 the purposes of this section, “housing development” also includes
25 a subdivision or common interest development, as defined in
26 Section 1351 of the Civil Code, approved by a city, county, or
27 city and county and consists of residential units or unimproved
28 residential lots and either a project to substantially rehabilitate
29 and convert an existing commercial building to residential use or
30 the substantial rehabilitation of an existing multifamily dwelling,
31 as defined in subdivision (d) of Section 65863.4, where the result
32 of the rehabilitation would be a net increase in available
33 residential units. For the purpose of calculating a density bonus,
34 the residential units do not have to be based upon individual
35 subdivision maps or parcels. The density bonus shall be
36 permitted in geographic areas of the housing development other
37 than the areas where the units for the lower income households
38 are located.

39 (k) The granting of a concession or incentive shall not be
40 interpreted, in and of itself, to require a general plan amendment,

1 local coastal plan amendment, zoning change, or other
2 discretionary approval. This provision is declaratory of existing
3 law.

4 (l) For the purposes of this chapter, concession or incentive
5 means any of the following:

6 (1) A reduction in site development standards or a
7 modification of zoning code requirements or architectural design
8 requirements that exceed the minimum building standards
9 approved by the California Building Standards Commission, as
10 provided in Part 2.5 (commencing with Section 18901) of
11 Division 13 of the Health and Safety Code, including, but not
12 limited to, a reduction in setback and square footage
13 requirements and in the ratio of vehicular parking spaces that
14 would otherwise be required that results in identifiable,
15 financially sufficient, and actual cost reductions.

16 (2) Approval of mixed use zoning in conjunction with the
17 housing project if commercial, office, industrial, or other land
18 uses will reduce the cost of the housing development and if the
19 commercial, office, industrial, or other land uses are compatible
20 with the housing project and the existing or planned development
21 in the area where the proposed housing project will be located.

22 (3) Other regulatory incentives or concessions proposed by the
23 developer or the city, county, or city and county that result in
24 identifiable, financially sufficient, and actual cost reductions.

25 This subdivision does not limit or require the provision of
26 direct financial incentives for the housing development,
27 including the provision of publicly owned land, by the city,
28 county, or city and county, or the waiver of fees or dedication
29 requirements.

30 (m) This subdivision does not supersede or in any way alter or
31 lessen the effect or application of the California Coastal Act
32 (Division 20 (commencing with Section 30000) of the Public
33 Resources Code.

34 (n) This subdivision does not prohibit a city, county, or city
35 and county from granting a density bonus greater than what is
36 described in this section for a development that meets the
37 requirements of this section or from granting a proportionately
38 lower density bonus than what is required by this section for
39 developments that do not meet the requirements of this section.

1 (o) For purposes of this section, the following definitions shall
2 apply:

3 (1) “Development standard” includes site or construction
4 conditions that apply to a residential development pursuant to
5 any ordinance, general plan element, specific plan, charter
6 amendment, or other local condition, law, policy, resolution, or
7 regulation.

8 (2) “Maximum allowable residential density” means the
9 density allowed under the zoning ordinance, or if a range of
10 density is permitted, means the maximum allowable density for
11 the specific zoning range applicable to the project.

12 (p) (1) Upon the request of the developer, no city, county, or
13 city and county shall require a vehicular parking ratio, inclusive
14 of handicapped and guest parking, of a development meeting the
15 criteria of subdivision (b), that exceeds the following ratios:

16 (A) Zero to one bedrooms: one onsite parking space.

17 (B) Two to three bedrooms: two onsite parking spaces.

18 (C) Four and more bedrooms: two and one-half parking
19 spaces.

20 (2) If the total number of parking spaces required for a
21 development is other than a whole number, the number shall be
22 rounded up to the next whole number. For purposes of this
23 subdivision, a development may provide “onsite parking”
24 through tandem parking or uncovered parking, but not through
25 onstreet parking.

26 (3) This subdivision shall apply to a development that meets
27 the requirements of subdivision (b) but only at the request of the
28 applicant. An applicant may request additional parking incentives
29 or concessions beyond those provided in this section, subject to
30 subdivision (d).